

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|-------------------------------------------|---|------------|
| MARGY M. PHELPS-ROPER, |) | |
| |) | |
| Plaintiff, |) | 4:10CV3131 |
| |) | |
| V. |) | |
| |) | |
| JON BRUNING, Individually and in his |) | ORDER |
| Official Capacity as Attorney General of |) | |
| the State of Nebraska, COLONEL |) | |
| BRYAN TUMA, Individually and in his |) | |
| Official Capacity as Superintendent of |) | |
| the Nebraska State Patrol, L KENNETH |) | |
| POLIKOV, Individually and in his |) | |
| Official Capacity as Sarpy County |) | |
| Attorney, LEONARD HOULOOSE, |) | |
| Individually and in his Official Capacity |) | |
| as Chief of the Papillion Police |) | |
| Department, DONALD KLEINE, |) | |
| Individually and in his Official Capacity |) | |
| as Douglas County Attorney, ALEX |) | |
| HAYES, Individually and in his Official |) | |
| Capacity as Chief of the Omaha Police |) | |
| Department, and JOHN STACEY, |) | |
| Individually and in his Official Capacity |) | |
| as Chief of the Bellevue Police |) | |
| Department, |) | |
| |) | |
| Defendants. |) | |
| |) | |

In preparation for today's hearing, I want counsel for the defendants to carefully read the following: *Texas v. Johnson*, 491 U.S. 397 (1990) and *United States v. Eichman*, 496 U.S. 310 (1990). Then, counsel for the defendants should be prepared to answer the following questions when I ask them at the hearing this afternoon:

Recognizing your duty of candor to the tribunal, and following *Johnson* and *Eichman*, am I not bound to restrain future enforcement of the Nebraska flag statute at least as applied to the plaintiff and members of her church so long as they otherwise act peacefully while desecrating the American or Nebraska flag during their religiously motivated protests?

If the answer to the foregoing question is “no,” what federal precedent do you have to support your position?

IT IS SO ORDERED.

DATED this 15th day of July, 2010.

BY THE COURT:

Richard G. Kopf
United States District Judge